IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.531/2003

Shri Dilip Vaman Borkar,
married, service, aged
36 years, r/o. H.No.291/1,
Dhavalimol, Ponda, Goa. .... Petitioner.

V/s.

1. Shri Krishna Bhimrao Gharse,
married, businessman, aged
58 years, r/o. Dhavali,
Ponda, Goa.

2. Smt. Renuka Krishna Gharse,
married, housewife, aged 46 years,
Dhavali, Ponda, Goa.

3. Village Panchayat of Queula,
through its Sarpanch, having
Office at Queula, Ponda, Goa. .... Respondents.

Shri Nitin Sardessai, Advocate for the petitioner.

Shri U.S. Kolwalkar, Advocate for the respondents.

CORAM : A.M. KHANWILKAR, J.

DATE : NOVEMBER 20, 2003.

ORAL JUDGMENT :

Heard both sides. Rule. Rule made returnable forthwith by consent. Mr. Kolwalkar waives service of rule. As short question is involved in this petition, taken up for hearing by consent.

2. This petition under Article 227 of the Constitution of India takes exception to the Judgment and Order passed by the Civil Judge, Jr. Division,

Ponda dated 20.9.2003 below Exhibit-35 in Regular Civil Suit No.55/98/B. By this application, the petitioner prayed for adjournment which request was, however, rejected by the Court below on the ground that adjournment sought was unsubstantiated by medical certificate of the concerned witness. Before this Court, however, the petitioner has produced the Medical Certificate of the concerned witness which clearly indicates that it was not possible for the witness to remain present in the Court on the given date. Besides, what is relevant to note is that the respondent had given no objection for adjournment, but still the Court rejected the application on the ground that several adjournments were granted in the past. Indeed, the the matter was adjourned on more than one occasion in the past, but that will be of little significance with reference to the request as made by the petitioner on 20.9.2003, on which date, the petitioner had expressed his inability to ensure presence of the concerned witness due to his sickness. To my mind, sufficient cause has been made out by the petitioner. In the circumstances, the order under challenge is set aside and the application as filed at Exhibit-35 is allowed on condition that the amount deposited by the petitioner quantified at Rs.7500/- is made over to the respondents towards the costs of these proceedings. Petition succeeds on the above terms.

The trial Court shall, however, ensure that no further unnecessary adjournments are granted at the instance of the petitioner in future in view of the undertaking given by the petitioner before this Court that he would co-operate with the trial Court for early disposal of the suit.

A.M. KHANWILKAR, J.

ssm.